

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 13 OF 2004

1. Smt. Florinda Bhardwa  
and her husband,

2. Shri Ramesh Bhardwa,  
Both major, married,  
British Nationals,  
residing at 35, Melrose  
Avenue, Woodgreen,  
London, U.K.

.... Appellants

*Versus*

1. Shri Datta Damodar Kakule,  
and his wife,

2. Smt. Jyotsnabai Datta Kakule,  
Both of major, married,  
both residents of Confraiwado,  
Candolim, Bardez, Goa.

.... Respondents

Shri J.E. Coelho Pereira, Sr. Advocate with Shri V. Korgaonkar, Advocate for  
the Appellants.

Shri J.P. Mulgaonkar, Advocate for the Respondents.

CORAM : P.V. KAKADE, J.

DATE : 24<sup>th</sup> NOVEMBER, 2006

ORAL JUDGMENT :

Heard both the parties.

2. The appellants-defendants have filed this appeal against the interim order passed by the Civil Judge, Senior Division, Mapusa dated 17/11/2003, whereby in temporary injunction application, it was directed that the defendants shall maintain status quo in respect of the suit access and were further directed not to interfere with the suit strip lying to the west of the suit plot and not to create third party interest or transfer the suit plot until the suit was decided on merits.

3. While the appeal was brought in this Court, by order dated 30/04/2004, this Court directed that the order of the lower Court should be restricted to the maintenance of status quo in respect of the use of the access and respondent was not pressing for any other reliefs. On that basis, it was further directed that the applicants be permitted to pluck the fruits of the trees in the disputed strip. The applicants were also permitted to transfer the property subject to the condition that the transferee would not get better title and would be bound by the result of the litigation. On this order, the civil application accompanying the appeal came to be disposed of.

4. This appeal is of the year 2004 and suit came to be filed in the

year 2000, being the Special Civil Suit No. 59/2000/A. In my considered view, the suit must be right for hearing and, therefore, no purpose would be served by adjudicating the interim matter on merits at this stage. Therefore, it is hereby directed that the trial Court shall take up the matter for adjudication on merits, after giving opportunity to both the sides to lead their evidence, as early as possible. In the meantime, parties shall be bound by the earlier order passed by this Court on 30/04/2004 in the civil application. With this direction, the appeal stands disposed of with no order as to costs.

**P.V. KAKADE, J.**

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